IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1609 OF 2007

Smt.Shobha Sevanand Kini : Petitioner

(Orig. Plaintiff)

V/s.

Mrs.Lilly Krishna Shenoy & Ors. : Respondents

(Orig.Defendants)

...

Mr.P.K.Dhakephalkar i/b. Mr.Jaydeep S. Deo for the petitioner.

Mr.P.N.Patwardhan with Mr.Manisha Pant i/b. M/s.Bhave & Co., for respondent no.2.

...

CORAM : S.A.BOBDE, J.

DATE : JULY 16, 2007.

P.C.

1. By this Petition, the petitioner has challenged the concurrent findings of both the Courts below that she is not entitled to an injunction restraining the respondent no.2-Bank from disturbing her use, occupation and possession of the suit premises. Admittedly, the premises are of the respondent-Bank which were taken on lease from the landlady i.e. the respondent no.1. These premises were given to the petitioner’s husband because he was employed with the Bank. There is no document which shows

the creation of tenancy in favour of the petitioner. The petitioner claims a tenancy now by virtue of the fact that certain payments have been made by her to the Bank by cheque. The Bank does not admit that these payments were rent on account of tenancy created by them in favour of the petitioner.

2. As far as the husband’s rights are concerned, it appears that those rights, if any, have been extinguished by the fact of termination of the husband from the service of the Bank and proceedings for eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, hereinafter referred to as the said "Act". There is no dispute that the question of the husband’s termination was confirmed by the Surpeme Court and the proceedings for his eviction were confirmed when an appeal against the order of the Estate Officer was dismissed and the said orders were confirmed by this Court in Writ Petition no.2531 of 2002. There is also no dispute about the fact that the husband has vacated the premises under his letter dated 7.3.2003 addressed to the Bank. After the husband’s rights were extinguished, the petitioner instituted the present suit and sought an injunction which has been refused by both the Courts below.

3. It was argued by Mr.Dhakephalkar, the learned counsel for the petitioner, that there was a right in the

petitioner to occupy the premises by virtue of the fact that she has paid rent to the respondent-Bank. Thought it might be possible to infer that some payments were made to the respondent-Bank, there is no proof that those payments were on account of rent. There is also no evidence of creation of tenancy in her favour. It is, therefore, difficult to accept the submission on behalf of the petitioner that she is entitled to any protection on that count.

4. The learned counsel further pointed out that the respondent-Bank is not entitled as a lessor to take possession except in accordance with the procedure established by law. This principle would have no application to the present case in view of the fact that the Bank has indeed resorted to the procedure of recovering the possession of the premises under the said Act. The petitioner does not establish any prima facie right recognised by law to retain occupation of the premises which were given to her husband on account of his being an employee of the respondent-Bank. The petitioner has not established any right with the Bank. If there was any right, it was on account of the fact of her husband’s employment which itself has been terminated.

5. In these circumstances, there is no reason to interfere with the concurrent findings of both the Courts

below. The Writ Petition is, therefore, dismissed.

S.A. BOBDE, J.